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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2398/2014**, ***

Communication submitted by:	Arab Millis (represented by counsel, Nassera Dutour of the Collectif des familles de disparu(e)s en Algérie)
Alleged victims:	The author and Mohamed Millis (son of the author)
State party:	Algeria
Date of communication:	10 March 2014 (initial submission)
Document references:	Decision under rules 92 and 97 of the rules of procedure of the Committee, transmitted to the State party on 16 August 2013 (not issued in document form)
Date of adoption of Views:	6 April 2018
Subject matter:	Enforced disappearance
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Right to an effective remedy; cruel, inhuman or degrading treatment or punishment; liberty and security of the person; human dignity; recognition as a person before the law; freedom of assembly
Articles of the Covenant:	2 (2) and (3), 6, 7, 9, 10, 14, 16 and 21
Articles of the Optional Protocol:	2, 3 and 5 (2)

1.1 The author of the communication, dated 10 March 2014, is Arab Millis, an Algerian national. He claims that his son, Mohamed Millis, born on 7 March 1964 and also an Algerian national, was the victim of enforced disappearance attributable to the State party, in violation of articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the International Covenant on

* Re-issued for technical reasons (27 August 2018).

** Adopted by the Committee at its 122nd session (12 March–6 April 2018).

*** The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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Civil and Political Rights. The author maintains that he himself is the victim of violations of articles 2 (2), 7 read in conjunction with article 2 (3), and 21 of the Covenant. The Covenant and its Optional Protocol entered into force for the State party on 12 December 1989. He is represented by counsel, Nassera Dutour of the Collectif des familles de disparu(e)s en Algérie.

1.2 On 25 July 2014, the State party requested that the admissibility of the communication be considered separately from the merits. On 3 October 2014, the Committee informed the State party and the author of the decision of its Special Rapporteur on new communications and interim measures to examine the admissibility of the communication together with the merits.

The facts as submitted by the author

2.1 During the years of conflict in the 1990s, the author was manager of a café in the centre of Birkhadem municipality (Algiers *wilaya* (governorate)). He claims that, at that time, police officers from the town police station would burst into the café twice a week, order the doors closed and search everyone present, saying that they were looking for terrorists.

2.2 On 9 September 1993, at around 2 p.m., the author was with his son, Mohamed Millis, when two armed and uniformed police officers, A.G. (now retired) and A.B. (now deceased), ordered Mohamed Millis to show them his identity documents. The police officers then ordered him to follow them, without giving any explanation or showing an arrest warrant. They took him away in an official vehicle to Birkhadem police station. There were two witnesses to the events, A.C. and S.M., who, for fear of reprisals, only dared to report what they had witnessed to Birkhadem town hall on 16 April 2000. The author followed the police car and witnessed the police grab his son and go into the police station. He tried to follow them in to find out what was happening. The two officers allegedly stopped him from doing so, threatened him and subsequently denied being aware of the arrest of Mohamed Millis.

2.3 Mohamed Millis's brother then went to the police station with a friend. The police officers said that there was no mention of Mohamed Millis in the registers. The author returned to the police station with the two witnesses, A.C. and S.M., and was met with the same behaviour, although a police officer allegedly asked him to come back with a family civil-status book. He claims that he never stopped looking for his son, and went many times to the police station and the gendarmerie, where, allegedly, he was often questioned for hours. He claims that his son is still alive and is being held incommunicado in an unknown location without contact with the outside world and without any control over his detention conditions. His wife's state of health has allegedly deteriorated greatly as a result of the shock.

2.4 The author filed a first complaint, to which he received no response, with the gendarmerie brigade. He has subsequently submitted numerous administrative and judicial complaints. With regard to judicial remedies, on 28 May 1998, the author sent a complaint to the public prosecutor at the Court of Algiers and the public prosecutor at the Court of Bir Mourad Raïs. On 18 February 2006, he wrote again to the public prosecutor at the Court of Bir Mourad Raïs. Having not received any response, he sent further complaints to the public prosecutor at the Court of Bir Mourad Raïs on 9 August 2006 and 27 July 2007. On 23 July 2008, in response, he was sent an official statement instructing him to follow the procedure for compensation provided for in the 2005 Charter for Peace and National Reconciliation, but providing no information concerning the disappearance of Mohamed Millis. As compensation is conditional on obtaining a declaration of death, and the author refused to give up trying to ascertain the truth about the fate of his son, he did not wish to initiate the procedure. On 6 August 2008 and 20 October 2011, he again sent new complaints to the public prosecutor at the Court of Bir Mourad Raïs. Despite the complaints, no investigation has been undertaken and the remedies applied for have proved futile.

2.5 With regard to non-judicial remedies, on 28 May 1998, the author submitted: (a) a complaint to the President of the Republic and the Minister of Justice; (b) a complaint to the Chair of the National Human Rights Observatory; and (c) a letter to the Ombudsman,

who responded on 22 June 1998. The National Advisory Commission for the Promotion and Protection of Human Rights informed him by mail on 31 December 1999 that, according to information sent by the national security services, the person concerned was neither sought nor arrested by its services, and it was the national gendarmerie that had conducted an investigation into the case. On 21 June 2000, following a letter dated 14 June 2000 from the National Human Rights Observatory stating that it had found no trace of Mohamed Millis at Birkhadem police station, the author filed a new complaint with the President of the Observatory, noting that he had witnessed the arrest by two police officers from Birkhadem police station and stating who they were. He was asked to report to the National Advisory Commission for the Promotion and Protection of Human Rights on 1 August 2004. On 31 May 2005, the author contacted the President of the International Federation for Human Rights and the Secretary-General of the Workers' Party. On 11 February 2006, he wrote to the Minister of Justice, the President of the Republic, the Minister of the Interior and Local Government, the Head of Government and the President of the National Human Rights Observatory. Other than an incomplete answer from the National Human Rights Observatory, he received no response. On 9 August 2006, he sent a letter to the commander of the Birkhadem regional gendarmerie division and to Kamel Rezzak Bara, adviser on human rights to the President of the Republic. On 27 July 2007, the author again contacted the Minister of Justice, the Head of Government, Kamel Rezzak Bara, the commander of the Birkhadem regional gendarmerie division, the President of the Republic and the Minister of the Interior and Local Government. In two letters dated 27 February 2008 and 6 July 2008, the author was summoned by the Birkhadem criminal police division to "assist with inquiries". Despite being summoned, the author was never informed that any serious and thorough investigation had been conducted. The author wrote again to the Minister of Justice on 6 August 2008 and to the President of the Republic, the Minister of Justice, the Minister of the Interior and Local Government and the President of the National Advisory Commission for the Promotion and Protection of Human Rights on 20 October 2011, but received no reply. The last response he received was from the *wali* (prefect) at Bir Mourad Raïs *daira* (sub-prefecture) on 8 February 2009, inviting him to carry out the procedures provided for in the Charter for Peace and National Reconciliation.

2.6 In addition to the many complaints he has filed, the author is a founding member of SOS Disparus and participates regularly in the association's meetings and weekly rallies. He claims that, on 11 August 2010, at the age of 82, he was violently arrested by the police during a rally. He claims that he was again arrested at the age of 85, at 9.30 a.m. on 1 June 2013, when he was participating in a rally held by the association, and was taken by force to Salembier (El Madania) police station, where he was allegedly held until 4 p.m. His 77-year-old wife was also allegedly arrested on the same day.

The complaint

3.1 The author claims that his son is the victim of an enforced disappearance attributable to the State party, in violation of articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant. He also maintains that, read together and in the light of all the provisions of the Charter for Peace and National Reconciliation, articles 27 to 39, 45 and 46 of Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation represent an outright denial of the enforced nature of the disappearance, which has led to multiple violations of the Covenant, in particular articles 2, 7, 14, 19 and 21, in his regard.

3.2 He contends, firstly, that the legal and other measures he took between May 1998 and October 2011 meet the requirement of exhaustion of domestic remedies, as they have proved to be ineffective and useless. He also claims that the combined effect of Chapter IV of the Charter for Peace and National Reconciliation, adopted by referendum on 29 September 2005, and article 45 of Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation means there are no longer any effective and available domestic remedies in Algeria to which the families of victims of enforced disappearance may have recourse. He recalls in this regard that, in 2007, the Committee had noted in its concluding observations concerning the third periodic report of Algeria (CCPR/C/DZA/CO/3) that the Ordinance seemed to promote impunity and was therefore incompatible with the provisions of the Covenant. He also recalls that the

Ordinance does not recognize the offence of enforced disappearance and that articles 27, 28, 30 and 37 of the Ordinance make any compensation for the "victims of the national tragedy" conditional on obtaining a declaration of death. He considers that the Charter and its implementing legislation are intended to silence any questions concerning missing persons by awarding compensation without attempting to seek truth and justice. He recalls that, despite the complaints submitted by the author, no investigation has ever been opened. He adds that the fact that Mohamed Millis's case has been submitted to the Working Group on Enforced or Involuntary Disappearances does not constitute an obstacle to the admissibility of the communication, as that process does not constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol. The author concludes therefore that his communication is admissible.

3.3 The author considers that Ordinance No. 06-01 of 27 February 2006 on the implementation of the Charter for Peace and National Reconciliation constitutes a violation of the general obligation under article 2 (2) of the Covenant, in that the provision also entails a negative obligation for States parties to refrain from adopting measures that are contrary to the Covenant. He is of the view that, in adopting the Ordinance, in particular article 45, the State party adopted a legislative measure that deprived of effect rights recognized under the Covenant,[1] particularly the right to have access to an effective remedy against violations of human rights. The author considers that a breach, by action or omission, of the obligation imposed by article 2 (2) of the Covenant may engage the international responsibility of the State party.[2] He claims that, despite all his efforts, after the entry into force of the Charter and its implementing legislation, his complaints remained ineffective even though he provided specific information, as the only response in 2008 from the public prosecutor at the Court of Bir Mourad Raïs advised him to follow the procedure for compensation provided for in the Charter. He therefore claims to be a victim of this legislative provision that violates article 2 (2) of the Covenant.

3.4 The author also maintains that in Algeria there are no longer any effective and available domestic remedies to which the families of victims of enforced disappearance may have recourse. He recalls that, since the adoption of the Charter for Peace and National Reconciliation and its implementing legislation, in particular articles 45 and 46 of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, he has sent about 15 complaints and has received only 2 replies instructing him to follow the compensation procedure provided for in the Charter. He recalls that the mechanism provides only for compensation for "deceased victims of terrorism", conditional upon the obtention of a declaration of death for the disappeared person, without any investigation being carried out. Such compensation is determined not on the basis of the harm suffered by the victim and his or her family, but by the individual's age and socioprofessional status. He recalls that, in its 2007 concluding observations on the State party's third periodic report (CCPR/C/DZA/CO/3), the Committee recognized such reparation as being neither full nor complete and refers to general comments No. 20 on article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) and No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant to support the fact that this remedy does not comply with the requirements of article 2 (3) of the Covenant. He considers that the right to an effective remedy must include the right to adequate reparation and the right to the truth and, on the basis of the Committee's 2007 concluding observations on the State party's third periodic report (CCPR/C/DZA/CO/3), claims that Ordinance No. 06-01, particularly articles 45 and 46 declaring inadmissible complaints against members of the national defence and security forces, constitutes a violation of the right of victims to obtain effective remedies before national and international bodies. He claims that in terms of impact, the Charter for Peace and National Reconciliation and its implementing legislation represent measures that grant amnesty for acts committed by State agents and refers to the Committee's general comments Nos. 20 and 31 and its position that the nature of those measures contravenes the

[1] In support of his argument, the author refers to the concurring individual opinions of Fabián Salvioli, specifically in the case of *Djebbar and Chihoub v. Algeria* (CCPR/C/103/D/1811/2008).

[2] In support of his argument, the author refers to paragraph 4 of general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant.

right to an effective remedy as recognized in article 2 (3) of the Covenant. He accordingly considers that Mohamed Millis was deprived of his right to an effective remedy and that the Algerian State has failed in its obligation under article 2 (3) of the Covenant.

3.5 The author recalls the developments in the Committee's jurisprudence regarding enforced disappearances and considers that the mere risk or danger of loss of a person's life in the context of enforced disappearance is enough to justify a finding of a direct violation of article 6 of the Covenant. He recalls the facts surrounding the disappearance of his son, Mohamed Millis, and considers that the chances of finding him are shrinking by the day, and either that his son has lost his life or that incommunicado detention represents an extremely high risk to the right to life, since victims are at the mercy of their jailers, who are outside of any control. He therefore considers that the State party has failed in its duty to protect the right to life of his son, Mohamed Millis, in violation of article 6 of the Covenant.

3.6 The author argues that the circumstances of the disappearance of Mohamed Millis, namely the total secrecy surrounding the reasons for his arrest, his place of detention and his state of health, and the lack of contact with his family and the outside world, imply the offence of incommunicado detention and constitute a form of inhuman or degrading treatment in respect of him, in violation of article 7 of the Covenant. He also alleges that he and his family have experienced anguish and distress as a result of the disappearance of Mohamed Millis and the lack of a thorough investigation and official confirmation of the fate of their missing relative, as the Charter for Peace and National Reconciliation and its implementing legislation constitute an obstacle to the right to truth for the families of missing persons. He recalls that this right is protected under article 24 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance and is recognized by the Committee's jurisprudence. Accordingly, he considers that the anguish and distress that he has experienced, combined with the impossibility of ascertaining the truth owing to the existence of the Charter for Peace and National Reconciliation and its implementing legislation, constitute a form of torture or inhuman or degrading treatment amounting to a violation of article 7, read in conjunction with article 2 (3) of the Covenant, with regard to him and his family.

3.7 Recalling the guarantee of the right of everyone to liberty and security set forth in article 9 of the Covenant, which prohibits arbitrary arrest or detention, the author submits that the circumstances of the arrest and detention of Mohamed Millis constitute an arbitrary deprivation of his liberty and security of person. He therefore considers that his son has been deprived of the guarantees set out in article 9 of the Covenant, amounting to a violation of that article in his regard.

3.8 Recalling the provisions of article 10 of the Covenant, the author also argues that, in the absence of any investigation by the Algerian authorities, Mohamed Millis was deprived of his liberty and was not treated with humanity and dignity, constituting a violation of article 10 of the Covenant in his regard.

3.9 Recalling the provisions of article 14 of the Covenant and the Committee's general comment No. 32 on the right to equality before courts and tribunals and to a fair trial,[3] the author submits that, in practice and for political reasons, prosecutors apply article 45 of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation very broadly and refuse to investigate any complaint concerning a case of enforced disappearance, whether against public officials or persons unknown, or requesting an investigation even when the names of the perpetrators of the disappearances are known, as in this case.

3.10 The author then recalls the provisions of article 16 of the Covenant and the Committee's established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal of recognition as a person before the law if the victim was in the hands of the State authorities when last seen, and if the efforts of relatives to obtain access to effective remedies, including judicial remedies, have been systematically impeded. He also refers to

[3] General comment No. 32 on the right to equality before courts and tribunals and to a fair trial, para. 9.

the concluding observations on the third periodic report of Algeria under article 40 of the Covenant (CCPR/C/DZA/CO/3). He therefore asserts that, in keeping Mohamed Millis in detention without recognizing it as such, the Algerian authorities have denied his son the protection of the law and deprived him of his right to recognition as a person before the law, in violation of article 16 of the Covenant.

3.11 Finally, recalling freedom of peaceful assembly set forth in article 21 of the Covenant, as well as the conditions under which it may be restricted, the author notes that article 46 (9) of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation[4] prohibits collective expression by the families of disappeared persons and human rights defenders, including in relation to political meetings and demonstrations. He claims that he has been a victim of direct violations of his right to freedom of peaceful assembly and recalls that he was arrested on two occasions in 2010 and 2013 and held for several hours at a police station at the ages of 82 and 85. He claims that he was informed orally that he did not have the right to demonstrate as the implementing legislation for the Charter prohibits all demonstrations, and recalls that, in 2010, the President of the National Advisory Commission for the Promotion and Protection of Human Rights had himself banned demonstrations by families of the disappeared in front of his institution's headquarters. He therefore considers that he is a victim of a violation of article 21 of the Covenant.

3.12 The author requests the Committee to: (a) find that Algeria has violated articles 2 (2) and (3), 6, 7, 9, 10 and 16 of the Covenant, with regard to Mohamed Millis, and article 2 (2), article 7 read in conjunction with article 2 (3), and article 21 of the Covenant with regard to the author and his family; and (b) urge the State party to respect its international commitments and give effect to the rights recognized in the Covenant, as well as all the rights recognized in all the international human rights conventions ratified by Algeria. He also asks the Committee to request the State party to order that independent and impartial inquiries be conducted with the aim of: (a) finding Mohamed Millis and adhering to its commitment under article 2 (3) of the Covenant; (b) bringing the perpetrators of this enforced disappearance before the competent civil authorities for prosecution in line with article 2 (3) of the Covenant; and (c) providing Mohamed Millis, if he is still alive, and his family with adequate, effective and prompt reparation for the harm suffered, in accordance with articles 2 (3) and 9 of the Covenant. He further states that the reparation should be appropriate and proportional to the gravity of the violation, should be full and complete and should involve guarantees of non-recurrence, including the establishment of an independent commission to shed light on the fate of missing persons and all victims of the conflict in Algeria in the 1990s. Lastly, he asks the Committee to urge the Algerian authorities to repeal articles 27 to 39, 45 and 46 of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation.

State party's observations

4.1 On 25 July 2014, the State party requested that the admissibility of the communication should be considered separately from the merits and referred, without appending a copy, to the memorandum and additional note giving the Algerian Government's response on the inadmissibility of communications submitted to the Committee in connection with the implementation of the Charter for Peace and National Reconciliation. As the Committee had refused to consider the admissibility separately from the merits, the State party, on 9 March 2015, invited the Committee to refer to the background memorandum on the inadmissibility of communications submitted to the Committee in connection with the implementation of the Charter for Peace and National Reconciliation by way of comment on the merits of the allegations.

[4] Article 46 of the Ordinance establishes that "anyone who, through his or her spoken or written statements or any other act, uses or makes use of the wounds caused by the national tragedy to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, impugn the honour of its agents who served it with dignity or tarnish the image of Algeria abroad shall be liable to a term of imprisonment of 3 to 5 years and a fine of 250,000 to 500,000 [Algerian dinars]".

4.2 The State party is of the view that these communications, which incriminate public officials or other persons acting on behalf of public authorities in cases of enforced disappearance during the period in question — from 1993 to 1998 — should be examined taking "a comprehensive approach". The State party considers that such communications should be placed in the broader context of the sociopolitical situation and security conditions that prevailed in the country during a period when the Government was struggling to combat a form of terrorism aimed at provoking the "collapse of the Republican State". It was in this context, and in conformity with the Algerian Constitution (arts. 87 and 91), that the Algerian Government implemented precautionary measures and informed the United Nations Secretariat of its declaration of a state of emergency, in accordance with article 4 (3) of the Covenant.

4.3 The State party provides explanations of the context surrounding the period, from 1993 to 1998, during which the events occurred. These standard explanations are repeated systematically by the State party in all communications concerning cases of enforced disappearances.[5]

State party's additional observations

5.1 On 27 October 2014, the State party also transmitted an additional note to the main memorandum to the Committee, in which it questioned the intention behind the series of individual communications to the Committee since the beginning of 2009, which, it considered, constituted rather an abuse of procedure aimed at bringing before the Committee a broad historical issue whose causes and circumstances lie outside the Committee's purview. The State party observes that all these "individual" communications fail to make reference to the general context in which the disappearances occurred. The State party notes that the complaints focus solely on the actions of the security forces, without ever mentioning those of all the armed groups that used criminal techniques of concealment in order to incriminate the armed forces.

5.2 The State party indicates that it will not address the merits of the aforementioned communications until the issue of their admissibility has been settled. It adds that all judicial or quasi-judicial bodies have the obligation to deal with preliminary questions before considering the merits. It considers that the decision in the case in point to consider the questions of admissibility and the merits jointly and simultaneously — aside from the fact that it was not arrived at on the basis of consultation — seriously prejudices the proper consideration of the communications in terms of both their general nature and their intrinsic particularities. Referring to the rules of procedure of the Human Rights Committee, the State party notes that the sections relating to the Committee's procedure to determine the admissibility of communications are separate from those relating to the consideration of communications on the merits and that therefore these questions could be considered separately. Concerning the exhaustion of domestic remedies, the State party stresses that the author did not submit any complaints or requests for information through channels that would have allowed consideration of the case by the Algerian judicial authorities.

5.3 Recalling the Committee's jurisprudence regarding the obligation to exhaust domestic remedies, the State party reiterates that mere doubts about the prospect of success or concerns about delays do not exempt the author from the obligation to exhaust these remedies. As to the question of whether the promulgation of the Charter for Peace and National Reconciliation has barred the possibility of appeal in this area, the State party replies that the failure by the author to submit his allegations to examination has prevented the Algerian authorities from taking a position on the scope and limitations of the applicability of the Charter. Moreover, under Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, the only proceedings that are inadmissible are those brought against "members of any branch of Algeria's defence and security forces" for actions consistent with their core duties to the Republic, namely, to protect persons and property, safeguard the nation and preserve its institutions. On the other hand, any allegations concerning actions attributable to the defence or security forces that

[5] See, inter alia, *El Boathi v. Algeria* (CCPR/C/119/D/2259/2013), paras. 4.3 ff., and *Boudjema v. Algeria* (CCPR/C/121/D/2283/2013), paras. 5.3 ff.

can be proved to have taken place in any other context are subject to investigation by the appropriate courts.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee recalls that the joinder of admissibility and merits, in conformity with the decision of the Special Rapporteur (see paragraph 1.2 above), does not preclude the two matters being considered separately.

6.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that the disappearance was reported to the Working Group on Enforced or Involuntary Disappearances. However, it recalls that extra-conventional procedures or mechanisms established by the Human Rights Council to examine and report publicly on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide do not generally constitute an international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.[6] Accordingly, the Committee considers that the examination of the case of Mohamed Millis by the Working Group on Enforced or Involuntary Disappearances does not render it inadmissible under this provision.

6.3 The Committee takes note of the author's claim that domestic remedies have been exhausted. The Committee notes that, in challenging the admissibility of the communication, the State party has simply referred to its background memorandum on dealing with the issue of disappearances in the light of the implementation of the Charter for Peace and National Reconciliation and that it provided, on 27 October 2011, an additional note on the inadmissibility of communications submitted to the Human Rights Committee in connection with the implementation of the Charter for Peace and National Reconciliation. The Committee recalls that the State party has a duty not only to carry out thorough investigations of alleged violations of human rights brought to the attention of its authorities, particularly enforced disappearances or violations of the right to life, but also to prosecute, try and punish anyone held to be responsible for such violations.[7] The Committee notes that, on 23 July 2008, the public prosecutor at the Court of Bir Mourad Raïs issued an official statement instructing Arab Millis to follow the procedure for compensation established under the 2005 Charter for Peace and National Reconciliation and that, on 8 February 2009, the *wali* of Bir Mourad Raïs *daira* invited the author to adopt the same approach. The Committee notes, however, that the official statement did not provide any answer in respect of Mohamed Millis. It also notes that, in two letters dated 27 February 2008 and 6 July 2008, the author was summoned by the Birkhadem criminal police division to "assist with inquiries" and, despite being summoned, he was never informed that any serious and thorough investigation had been conducted. It therefore gives credence to the facts described by the author which indicate that no thorough and effective investigation has been carried out into the disappearance of Mohamed Millis. Furthermore, the State party has not offered any specific explanation in its observations regarding the case of Mohamed Millis that would lead to the conclusion that an effective remedy is now available. In addition, Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation continues to be applied despite the Committee's

[6] See, inter alia, *Y. v. Canada* (CCPR/C/116/D/2314/2013); *Mandić v. Bosnia and Herzegovina* (CCPR/C/115/D/2064/2011); *Tharu v. Nepal* (CCPR/C/114/D/2038/2011); *Ammari v. Algeria* (CCPR/C/112/D/2098/2011); and *Zair v. Algeria* (CCPR/C/112/D/2026/2011).

[7] See, inter alia, *Zair v. Algeria*, para. 6.3; *Ammari v. Algeria*, para. 7.3; *Mezine v. Algeria* (CCPR/C/106/D/1779/2008), para. 7.4; *Berzig v. Algeria* (CCPR/C/103/D/1781/2008), para. 7.4; *Khirani v. Algeria* (CCPR/C/104/D/1905/2009), para. 6.4; and *Boudjemai v. Algeria* (CCPR/C/107/D/1791/2008), para. 7.4.

recommendation that it should be brought into line with the Covenant [8] (see the Committee's concluding observations on the State party's third periodic report). The Committee therefore concludes that article 5 (2) (b) of the Optional Protocol is not an obstacle to the admissibility of the present communication.

6.4 The Committee notes that the author alleges violations that raise issues under articles 2 (2) and (3), 6, 7 read alone and in conjunction with article 2 (3), 9, 10, 16 and 21 of the Covenant.

6.5 The Committee notes that the author claims a violation of article 2 (2) and (3) of the Covenant in his regard and in regard of Mohamed Millis. The Committee recalls that the provisions of article 2 (2) of the Covenant lay down general obligations for States parties which cannot give rise, when invoked separately, to a claim in a communication.[9] This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

6.6 The Committee notes that the author also devotes a paragraph to article 14 of the Covenant. It notes, however, that the author does not specifically allege any violation of that article with respect to him or to Mohamed Millis and therefore will not consider that issue on the merits.

6.7 The Committee notes that the author has also claimed a violation of article 21 of the Covenant. The Committee considers that the author has failed to sufficiently substantiate his claim of a violation of article 21 of the Covenant and notes that the author does not appear to have taken any legal steps with regard to the alleged attacks on his freedom to demonstrate. Consequently, this part of the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

6.8 Nevertheless, the Committee considers that the allegations that raise issues under articles 6 and 7 read alone and in conjunction with article 2 (3) and articles 9, 10 and 16 of the Covenant have been sufficiently substantiated. The Committee therefore proceeds to consider the communication on the merits with regard to the alleged violations of articles 6, 7, 9, 10 and 16 of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes that the State party has merely referred to its collective and general comments, which it has previously transmitted to the Working Group on Enforced or Involuntary Disappearances and the Committee in relation to other communications, in order to confirm its position that such cases have already been settled through the implementation of the Charter for Peace and National Reconciliation. The Committee refers to its jurisprudence and recalls that the State party may not invoke the provisions of the Charter against persons who invoke provisions of the Covenant or who have submitted, or may submit, communications to the Committee. The Covenant demands that the State party concern itself with the fate of every individual and treat every individual with respect for the dignity inherent in every human being.[10] Given that the amendments recommended by the Committee have not been introduced, Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation contributes, in the present case, to impunity and cannot be considered compatible with the provisions of the Covenant.[11]

7.3 The Committee notes that the State party has not replied to the author's claims concerning the merits of the case and recalls its jurisprudence, according to which the burden of proof should not lie solely with the author of a communication, especially given

[8] See CCPR/C/DZA/CO/3, paras. 7, 8 and 13.

[9] See *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

[10] See *Zair v. Algeria*, para. 7.2; and *Ammari v. Algeria*, para. 8.2.

[11] See *Ammari v. Algeria*, para. 8.2.

that the author and the State party do not always have the same degree of access to evidence and that often only the State party is in possession of the necessary information.[12] In conformity with article 4 (2) of the Optional Protocol, the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives, and to provide the Committee with the information available to it.[13] In the absence of any explanations from the State party in .his respect, due weight must be given to the author's allegations, provided they have been sufficiently substantiated.

7.4 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represents continuing violation of various rights recognized in the treaty.[14]

7.5 The Committee notes that Mohamed Millis was last seen on 9 September 1993, following his arrest by A.G. and A.B. when they were entering Birkhadem police station. It notes that two individuals, in addition to the author, witnessed the arrest of Mohamed Millis. The Committee notes that the State party has produced no evidence to establish what happened to Mohamed Millis and has never even confirmed his detention. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, effectively removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.[15] In the present case, the Committee notes that the State party has produced no evidence to indicate that it fulfilled its obligation to protect the life of Mohamed Millis. The Committee therefore finds that the State party has failed in its duty to protect Mohamed Millis's life, in violation of article 6 (1) of the Covenant.

7.6 The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 on article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), in which it recommends that States parties take steps to prohibit incommunicado detention. It notes in the present case that the author has never received any information on the fate or place of detention of Mohamed Millis. The Committee therefore considers that it is possible that Mohamed Millis, who disappeared on 9 September 1993, is still being held incommunicado by the Algerian authorities. In the absence of any explanation from the State party, the Committee considers that this disappearance constitutes a violation of article 7 of the Covenant with regard to Mohamed Millis.[16]

7.7 In the light of the foregoing, the Committee will not consider separately the claims in relation to the violation of article 10 of the Covenant.[17]

7.8 The Committee also takes note of the anguish and distress caused to the author by the disappearance of Mohamed Millis. It considers that the facts before it disclose a

[12] See, inter alia, *Ammari v. Algeria*, para. 8.3; *Mezine v. Algeria*, para. 8.3; *El Abani v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007), para. 7.4; and *Berzig v. Algeria*, para. 8.3.

[13] See *Mezine v. Algeria*, para. 8.3; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

[14] See *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 11.3; *Serna et al. v. Colombia* (CCPR/C/104/D/2134/2012), para. 9.4; and *El Boathi v. Algeria*, para. 7.4. See also general comment No. 6 on article 6 (Right to life), para. 4: "States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life."

[15] See *Louddi v. Algeria* (CCPR/C/112/D/2117/2011), para. 7.4; *Mezine v. Algeria*, para. 8.4; and *Boudjemai v. Algeria*, para. 8.4.

[16] See *Ammari v. Algeria*, para. 8.5; *Mezine v. Algeria*, para. 8.5; *Khirani v. Algeria*, para. 7.5; *Berzig v. Algeria*, para. 8.5; and *El Alwani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

[17] See *Ammari v. Algeria*, para. 8.6.

violation with regard to the author of article 7 read alone and in conjunction with article 2 (3) of the Covenant.[18]

7.9 With regard to the alleged violation of article 9 of the Covenant, the Committee takes note of the author's allegations that Mohamed Millis was arbitrarily arrested, without a warrant, was not formally charged and was not brought before a judicial authority, which would have enabled him to challenge the lawfulness of his detention. In the absence of any information from the State party in that regard, the Committee considers that due weight must be given to the author's allegations.[19] The Committee therefore finds a violation of article 9 of the Covenant with regard to Mohamed Millis.[20]

7.10 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal to recognize him or her as a person before the law, particularly if the efforts of his or her relatives to obtain access to potentially effective remedies have been systematically impeded.[21] In the present case, the Committee notes that the State party has not furnished any convincing explanation concerning the fate or whereabouts of Mohamed Millis despite the requests from his relatives and that, when he was last seen, Mohamed Millis was in the hands of the authorities. The Committee finds that Mohamed Millis's enforced disappearance more than 24 years ago removed him from the protection of the law and deprived him of his right to be recognized as a person before the law, in violation of article 16 of the Covenant.

7.11 The author also invokes article 2 (3) of the Covenant, which requires States parties to ensure that individuals have accessible, effective and enforceable remedies for asserting the rights recognized in the Covenant. The Committee recalls the importance it attaches to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing complaints of violations of the rights guaranteed under the Covenant.[22] It refers to its general comment No. 31 on the nature of the general legal obligation imposed on States parties to the Covenant, in which it states that a failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In this case, the family of Mohamed Millis reported his disappearance to the competent authorities; the State party did not carry out a thorough and effective investigation into his disappearance and neither the author nor his family received any information. Furthermore, the legal impossibility of applying to a judicial body since the promulgation of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation continues to deprive Mohamed Millis, the author and his family of any access to an effective remedy, given that the Ordinance prohibits using the justice system to shed light on the worst offences, including enforced disappearance.[23] The Committee finds that the facts before it reveal a violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant, with regard to Mohamed Millis and of article 2 (3), read in conjunction with article 7 of the Covenant, with regard to the author.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation by the State party of articles 6, 7, 9 and 16 of the Covenant as well as of article 2 (3) read in conjunction with articles 6, 7, 9 and 16 of the Covenant, with regard to Mohamed Millis. It also finds a violation by the State party of article 7 of the Covenant, read alone and in conjunction with article 2 (3), with regard to the author.

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[18] See *Mezine v. Algeria*, para. 8.6; *Khirani v. Algeria*, para. 7.6; *Berzig v. Algeria*, para. 8.6; *El Abani v. Libyan Arab Jamahiriya*, para. 7.5; and *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.11.

[19] See *Chani v. Algeria* (CCPR/C/116/D/2297/2013), para. 7.5.

[20] See, inter alia, *Mezine v. Algeria*, para. 8.7; *Khirani v. Algeria*, para. 7.7; and *Berzig v. Algeria*, para. 8.7.

[21] See *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 10.9; *Tharu et al. v. Nepal*, para. 10.9; and *Serna et al. v. Colombia*, para. 9.5.

[22] See *Allioua and Kerouar v. Algeria* (CCPR/C/112/D/2132/2012), para. 7.11.

[23] See CCPR/C/DZA/CO/3, para. 7.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This provision requires that States parties make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is obliged, inter alia, to: (a) conduct an in-depth, thorough and impartial investigation into the disappearance of Mohamed Millis and provide the author with detailed information about the results of its investigation; (b) release Mohamed Millis immediately if he is still being held incommunicado; (c) in the event that Mohamed Millis is deceased, hand over his remains to his family; (d) prosecute, try and punish those responsible for the violations committed; (e) provide adequate compensation to the author for the violations perpetrated against him, and to Mohamed Millis, if he is alive; and (f) provide appropriate satisfaction for the author and his family. Notwithstanding the terms of Ordinance No. 06-01 on the implementation of the Charter for Peace and National Reconciliation, the State party should ensure that it does not impede enjoyment of the right to an effective remedy for crimes such as torture, extrajudicial killings and enforced disappearances. It is also under an obligation to take steps to prevent similar violations in the future. To that end, the Committee is of the view that the State party should review its legislation in mind of its obligation under article 2 (2) of the Covenant and, in particular, repeal the provisions of the aforementioned Ordinance that are incompatible with the Covenant, to ensure that the rights enshrined in the Covenant can be enjoyed fully in the State party.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation is found to have occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the Committee's Views and disseminate them broadly in the official languages of the State party.